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Beverly A. Lee

Beverly A. Lee

In re application of: Keith G. Lintott

Art Unit: 1661

Appl. No.: 10/692,919

PTO Confirmation No.: 9063

Filed: October 24, 2003

Examiner: Annette H. Para

For: Chrysanthemum Plant Named 'Jenny Wren Crimson'

Atty. Docket: 10451.0053.NPUS01

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Listed on accompanying PTO Form 1449 are documents and other information that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98. Copies of the documents are enclosed.

Enclosed is a copy of U.S. Plant Patent No. 6,888 entitled "Chrysanthemum Plant Named Bravo." The variety 'Bravo' is discussed in the Brief Summary of the Invention in the instant application.

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Enclosed is a copy of U.S. Plant Patent No. 10,213 entitled "Chrysanthemum Plant Named Jenny Wren." The variety 'Jenny Wren' is the parent of the variety that is the subject of the instant application and is discussed in the Brief Summary of the Invention.

Enclosed is a copy of a Royal Van Zanten Garden Mum 2002 Catalog ("the Garden Mum Catalog") listing a brief description of the Chrysanthemum variety 'Jenny Wren' at pages 9 and 14 and a color picture at page 11. The variety 'Jenny Wren Crimson,' the subject of the instant application, is also briefly described in the Garden Mum Catalog at pages 9 and 14. A color picture of the 'Jenny Wren Crimson' variety is shown at page 11.

Further enclosed is a copy of a declaration by Mr. Peter Hesse relating to the catalog. As explained in the declaration of Mr. Hesse, the Garden Mum catalog was not publicly available more than one year prior to the filing date of the instant application. Although the Applicant does not believe that the Garden Mum Catalog is effective prior art as to its disclosure of the instant variety 'Jenny Wren Crimson,' the circumstances of the public distribution of the catalog are disclosed here for the Examiner's review and consideration.

As seen from the declaration, Mr. Hesse is the former Marketing Manager of Royal Van Zanten LLC, Nipomo, California, which issued the Garden Mum Catalog. From July 1, 2000, until the spring of 2004, Royal Van Zanten produced and sold Chrysanthemum cuttings for pots, cut flowers and gardens. During that time, Royal Van Zanten was the exclusive distributor of Chrysanthemum varieties developed at Cleangro, Ltd., Chichester, West Sussex, United Kingdom. 'Jenny Wren Crimson,' the variety that is the subject of the instant application, was developed at Cleangro Ltd in Chichester, West Sussex, United Kingdom, as described in the instant application.

As set forth in Mr. Hesse's declaration, Royal Van Zanten sold its varieties to a select few customers directly or through Cleangro Ltd's exclusive sales representative, Ball Seed

Company, Chicago Illinois. Royal Van Zanten advertised the Chrysanthemum varieties by catalogs, including the Garden Mum Catalog.

According to Mr. Hesse's declaration, the Garden Mum Catalog was printed and delivered to Royal Van Zanten on or about October 12, 2001. Copies of the Garden Mum Catalog were given to sales representatives of Ball Seed at a conference in Chicago on or about Wednesday, October 17, 2001. A draft mailing list for distribution of the catalog by Royal Van Zanten to potential customers was first created at Ball Seed as a spreadsheet on Friday, October 22, 2001. A letter to be inserted into the catalog for distribution was created at Ball Seed as a Microsoft Word document on Monday, October 22, 2001. A copy of the draft letter is attached to Mr. Hesse's declaration as Exhibit B.

From the series of events described by Mr. Hesse, it appears that the catalog was not ready for distribution to potential customers prior to at least Tuesday October 23, 2001 following preparation of the letter insert. Moreover, the catalogs did not include pricing information. As evident from the letter insert, it would have been necessary for customers to contact Ball Seed, the sales representative, or, in the case of a few select customers, Royal Van Zanten, to obtain at least pricing information for the varieties listed in the Garden Mum Catalog.

According to Mr. Hesse's declaration, Royal Van Zanten typically distributed catalogs such as the Garden Mum Catalog through bulk mail at the Standard Mail rate of the United States Post Office. The Post Office advertises on its website that the delivery time for Standard Mail shipping for catalogs of the size and weight of the Garden Mum Catalog is at least 2-9 days for locations throughout the United States. As noted in Mr. Hesse's declaration, the Post office confirmed that this delivery rate would have applied in 2001 also, when the catalog was actually distributed.

Finally, Mr. Hesse confirms that the Garden Mum Catalog was the first published disclosure in the United States by Royal Van Zanten or Ball Seed for, among others, the Chrysanthemum variety 'Jenny Wren Crimson.'

Based upon the information contained in the declaration of Mr. Hesse, Applicant does not believe that the Garden Mum Catalog was available more than one year prior to the filing date of the instant variety 'Jenny Wren Crimson.' The instant application was filed on October 24, 2003, claiming priority to provisional application Serial No. 60/421,389, originally filed on October 25, 2002. Potential customers of Royal Van Zanten or Ball Seed would not have received the Garden Mum Catalog for at least two days after mailing or until October 25, 2001 at the earliest, which is not more than one year prior to the effective U.S. filing date for this application. Moreover, inasmuch as the catalog did not include pricing information, it does not appear to have constituted an offer to sell the varieties listed there, but rather only an advertisement of them, again not more than a year prior to the effective U.S. filing date for this application.

To the Applicant's knowledge, the instant plant variety, 'Jenny Wren Crimson,' has not been sold, offered for sale, or otherwise made publicly available in the United States or elsewhere more than one year prior to the effective U.S. application filing date. Moreover, the instant variety has not been the subject of an application for protection in any other country, or appeared in any other printed publication, more than one year prior to the U.S. filing date for this application.

Applicant reserves the right to establish the patentability of the claimed invention over any of the information provided here, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist. The Examiner is specifically requested not to rely solely on the material submitted herewith.

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO-1449, and to indicate in the official file wrapper of this patent application that the documents have been considered.

It is believed that this disclosure complies with the requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98, and the Manual of Patent Examining Procedures § 609. If for some reason the Examiner considers otherwise, or requires additional information, Applicant requests that the Examiner call the undersigned so that any deficiencies can be remedied.

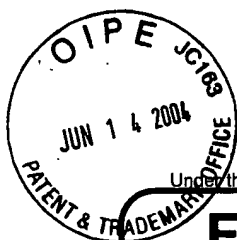
The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to Deposit Account No. 08-3038 referencing docket number 10451.0053.NPUS01.

Dated: June 14, 2004

Respectfully submitted,



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PTO/SB/17 (10-03)

Approved for use through 07/31/2006. OMB 0651-0032

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$ 180.00)

Complete if Known

Application Number	10/692,919
Filing Date	October 24, 2003
First Named Inventor	Keith G. Lintott
Examiner Name	Annette H. Para
Art Unit	1661
Attorney Docket No.	10451.0053.NPUS01

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number
Deposit Account Name

08-3038

Howrey Simon, et al.

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims	Fee from below	Fee Paid
Total Claims		-20** =	X	
Independent Claims		-3** =	X	
Multiple Dependent				

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)				(\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	\$180.00
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 180.00)

SUBMITTED BY

(Complete (if applicable))

Name (Print/Type)	MARK K. DICKSON	Registration No. (Attorney/Agent)	32,889	Telephone	650-463-8234
Signature		Date	JUNE 14, 2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.

SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



LIST OF REFERENCES CITED BY APPLICANT <i>(Use several sheets if necessary)</i> PTO FORM 1449	ATTY. DOCKET NO. *10451.0053.NPUS01	APPLICATION NO. *10/692,919
	APPLICANT *Keith G. Lintott	
	FILING DATE *October 24, 2003	GROUP *1661

U.S. PATENT DOCUMENTS							
*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	1.	Plant 10,213	1/27/1998	Wain	Plt./76		10/18/1996
	2.	Plant 6,888	6/27/1989	Mack	Plt./82		9/16/1987
	3.						
	4.						
FOREIGN PATENT DOCUMENTS							
*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION YES NO
	5.						
	6.						
	7.						
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)							
	8.	Royal Van Zanten Garden Mum Catalog 2002 listing Chrysanthemum variety 'Jenny Wren Crimson' at pages 9 and 11 (color picture) and 14. The catalog also lists parent variety 'Jenny Wren' at pages 9 and 11 (color picture) and 14.					
	9.						
	10.						
	11.						
	12.						
	13.						
	14.						
	15.						
	16.						

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.